



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

**June 29, 1989**

Honorable David S. Barron  
District Attorney  
12th Judicial District  
Grimes - Madison - Leon  
P. O. Box 599  
Anderson, Texas 77830

**LO-89-53**

Dear Mr. Barron:

You ask the following question:

Is it a violation of the State nepotism law for a District Attorney to continue the employment of his Deputy District Attorney, after he marries her sister? The Deputy's term of employment began prior to the marriage under a contract employing the Deputy from January 1, 1989, until December 31, 1992.

The Texas nepotism statute, article 5996a, V.T.C.S., prohibits a district attorney from appointing, voting for, or confirming the appointment of any person related to him within the third degree by consanguinity or the second degree by affinity. An individual is related to his wife's sister in the first degree of affinity. Attorney General Opinion 0-119 (1939).

Several prior opinions of this office have held that when a relationship covered by the nepotism statute arises during the course of an individual's employment, the individual may serve out the term of his or her contract. Attorney General Opinions V-785 (1949); 0-1408 (1939). The reasoning behind that rule is that a violation of the nepotism statute would not occur until the employing board or officer had to take action to renew the individual's contract. See Bean v. State, 691 S.W.2d 773, 775 (Tex. App. - El Paso 1985, pet. ref'd).

Although you state that the deputy in question has a four-year contract, we note that a district attorney has no authority to enter into such a contract because a statute provides that all personnel of a prosecuting attorney's office are subject to removal at the will of the prosecuting attorney. See State v. May, 270 S.W.2d 682 (Tex. Civ. App. - San Antonio 1954, no writ); see generally Attorney General Opinion JM-941 (1988) (discussion of "at will" employees). The prior opinions make clear that, in the absence of a valid contract for a specific term of employment, an individual must resign at the end of the pay period during which the relationship arises in order to avoid a violation of the nepotism statute. See Attorney General Opinions MW-286 (1980) (stating that if individual is employed on month-to-month basis, in effect a new contract is made each month); V-785 (1949); O-1408 (1939).

Yours very truly,



Sarah Woelk  
Letter Opinion Section  
Opinion Committee

SW/lcd

Ref.: ID# 6722  
ID# 6587  
ID# 6734